UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Columbia Gas Transmission Corporation — Docket No. RP07-340-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS SUBJECT TO REFUND AND CONDITIONS AND FURTHER REVIEW

(Issued June 11, 2007)

1. On March 6, 2007, Columbia Gas Transmission Corporation (Columbia Gas) filed revised tariff sheets[1] to implement daily delivery point scheduling penalties. Columbia Gas proposes an August 1, 2007 effective date, to coincide with the anticipated launch date of its new Electronic Bulletin Board System (EBB) system.[2] Columbia Gas asserts that the addition of these features will improve the scheduling practices of shippers, its ability to efficiently and effectively schedule, allocate, and sell available capacity, and service reliability. Various parties filed protests and comments in opposition to the proposal, as detailed in the body of this order. For reasons discussed below, the Commission accepts and suspends the revised tariff sheets to be effective on the earlier of January 1, 2008, or a date specified in a further order of the Commission, subject to refund and conditions and further review.

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[1] The revised tariff sheets are listed in the appendix to this order.

[2] In a letter filed on May 17, 2007 (May 17, 2007 letter), Columbia Gas requested an effective date of August 1, 2007, to coincide with a revised launch date of its new EBB system, instead of its originally-requested effective date of June 1, 2007. Columbia Gas stated that it will file revised tariff sheets to reflect the August 1, 2007 date. In this order, the Commission will grant waiver to allow the tariff sheets to become effective on the earlier of January 1, 2008, or a date specified in a further order of the Commission. Accordingly, Columbia Gas is not required to refile the tariff sheets to reflect the new requested effective date.

I. Details of the Filing

A. Daily Delivery Point Scheduling Penalties

2. Columbia Gas proposes to revise section 19 of its General Terms and Conditions (GT&C) to implement new daily delivery point scheduling penalties. The penalties would apply to the difference between a shipper's scheduled deliveries at a delivery point and gas quantities the shipper actually takes at the point each day. During non-critical periods, the penalty would be imposed on each Dth taken that varies by 5 percent or more either above or below the scheduled quantity, and would equal Columbia Gas' then effective ITS rate for Interruptible Transportation Service (ITS). If Columbia Gas declares a Critical Day,[3] the penalty would be imposed on each Dth taken that varies by 2 percent or more above or below the scheduled quantity, and would equal three times the midpoint of the range of prices reported for "Columbia Gas, Appalachia" as published in *Platts Gas Daily* price survey.

3. Columbia Gas maintains that the proposal satisfies the three requirements in *Order No. 637*[4] and in section 284.12(b)(2)(v) of the Commission's regulations[5] that a pipeline must meet to include a penalty in its tariff. Columbia Gas further maintains that it has met the first requirement, that a penalty may be included in a tariff "to the extent necessary to prevent impairment of reliable service" because the proposed penalties are necessary to encourage shipper accuracy in nominating the amount of service that the shipper expects to take. Columbia Gas asserts that shippers on its system have shown a historical inability to keep actual quantities within an acceptable tolerance range of scheduled quantities, which has made it more challenging to effectively forecast and manage available capacity on its system. Columbia Gas contends that the data provided in exhibits A and B of the filing demonstrate wide variances between scheduled deliveries and actual deliveries which are common on its system and typical of historical patterns. Columbia Gas asserts that these wide variances make it difficult to predict and post available capacity on a day-to-day basis. Columbia Gas further asserts that scheduled quantities greater than actual takes result in a lost opportunity for other

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[3] Section 19.7 of Columbia Gas' existing GT&C, to be renumbered as section 19.8, provides in part that a "Critical Day" will be declared if it determines, based on criteria such as weather forecasts, line pack, storage conditions, and other operational circumstances that operating conditions are such that it faces a "threat to its system integrity and/or [its] ability to meet its firm service obligations . . ."

[4] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No.637, FERC Stats. and Regs., Reg. Preambles [1996-2000]* ¶ 31,091 (*Order No. 637*).

[5] 18 C.F.R. § 284.12(b)(2)(v) (2006).

shippers, and scheduled quantities less than actual takes result in less operational control and increased operational risk.

4. Columbia Gas asserts that its current penalty crediting mechanism in GT&C section 19.6 satisfies the second requirement of section 284.12(b)(2)(v), that pipelines credit all net penalty revenues to shippers.

5. Finally, Columbia Gas asserts that its filing meets the third requirement in section 284.12(b)(2)(v), that pipelines with penalties provide to shippers, on a timely basis, as much information as possible about the imbalance and overrun status of each shipper and the imbalance of the system. Columbia Gas maintains that its EBB ("Navigator", the EBB's proprietary name) provides its shippers with timely information concerning scheduling variances. Columbia Gas contends that since approximately 93 percent of its deliveries flow through meters equipped with electronic measurement equipment, the management of daily scheduling quantities is simplified. Columbia Gas further contends that this will give shippers the real time ability to manage scheduling variances. Columbia Gas asserts the multiple nomination cycles provided in section 6 of its GT&C will allow shippers to self-correct, avoid the scheduling penalties, and provide timely and accurate scheduling information. Columbia Gas states that shippers with no-notice transportation and firm storage services will not incur the penalties at the primary delivery points in their respective Storage Service Transportation (SST), No-Notice Transportation (NTS) or General Transportation (GTS) service agreements.[6]

6. Columbia Gas asserts that the Commission has consistently approved scheduling penalties to provide incentives for shippers to schedule accurately and its proposed scheduling penalties are consistent with *Order No. 637*. Columbia Gas maintains that Commission precedents approve of pipelines acting in a proactive manner to ensure system reliability, and that pipelines need not wait until a serious disruption has already occurred in order to propose reasonable measures to ensure system reliability. Columbia Gas contends that it is acting in a proactive manner to ensure a reasonable measure of control on its system. Columbia Gas further contends that, during non-critical periods, a nominal scheduling penalty at the ITS maximum recourse rate is preferable to issuing Critical Day notices and shipper-specific Operational Flow Orders (OFOs), with their attendant restrictions and high penalties.

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[6] Columbia Gas states that even at primary delivery points under no-notice services, shippers will be subject to the scheduling penalties to the extent that: (1) the actual delivered quantity exceeds the shipper's SST Maximum Daily Quantity (MDQ); (2) the actual delivered quantity exceeds the shipper's GTS MDQ; or (3) the actual delivered quantity exceeds the shipper's NTS Gas Supply Quantity (GSQ) which, on a daily basis, cannot be greater than its NTS Transportation Demand.

7. On March 15, 2007, Columbia Gas filed a letter (March 15, 2007 letter) with the Commission addressing the last sentence of proposed section 19.5, which states that "Shippers receiving No-Notice Transportation and Firm Storage Services will not incur the scheduling penalty at the primary delivery points set forth in their respective Service Agreements under Rate Schedules SST, NTS or GTS." Columbia Gas states that it was prompted by shipper concern to clarify this sentence to convey the meaning that its historical method of handling no-notice services would not be altered by the proposal. Columbia Gas further states that to do this, it will make a subsequent compliance filing deleting the last sentence of proposed section 19.5 and substituting the following language: "The scheduling penalty does not apply at delivery points covered by no-notice services."

B. Waiver

8. Columbia Gas requests that the Commission grant waiver of the 60-day time limit in section 154.207 of the Commission's regulations[7] in order to accommodate an effective date for the tariff sheets that is contemporaneous with the August 1, 2007 launch date of the new EBB system. Columbia Gas asserts, in view of the need to have the effective date coincide with the launch date of the new EBB system, good cause exists for the Commission to grant waiver of section 154.207.

II. Notice of Filing, Interventions, Comments, Protests, and Answers

9. Public notice of Columbia Gas' filing was issued on March 9, 2007. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18. C.F.R. § 154.210 (2006)). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2006)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Protests were filed by UGI Utilities, Inc. and UGI Penn Natural Gas, Inc. (UGI); Piedmont Natural Gas Company, Inc. (Piedmont); Sequent Energy Management, L.P. (Sequent); the Process Gas Consumers Group (PGC); Stand Energy Corporation (Stand); PSEG Energy Resources & Trade LLC (PSEG); Statoil Natural Gas LLC (Statoil); Coral Energy Resources, L.P. (Coral); New Jersey Natural Gas Company (New Jersey Natural); the East Ohio Gas Company d/b/a Dominion East Ohio and Hope Gas, Inc. d/b/a Dominion Hope (Dominion LDCs); Virginia Power Energy Marketing, Inc. (VPEM); Conectiv Energy Supply, Inc. and Delmarva Power & Light Company (CESI and Delmarva); Chesapeake Appalachia, L.L.C. (Chesapeake); Hopewell Cogeneration Limited Partnership (Hopewell); SUEZ Energy Marketing NA, Inc. (SEMNA); and Old Dominion Electric Cooperative (Old Dominion). Conditional protests were filed by the

[7] 18 C.F.R. §154.207 (2006).

Columbia Small Customer Group (CSCG); and the Easton Utilities Commission and the City of Charlottesville, Virginia (Cities). Comments were submitted by Baltimore Gas and Electric Company (BGE);[8] NiSource Distribution Companies (NiSource); the Independent Oil & Gas Association of West Virginia (IOGA); Indicated Shippers;[9] and Washington Gas Light Company (Washington Gas). Several parties requested an evidentiary hearing, summary judgment, maximum suspension of the rates, or a technical conference. Honeywell International, Inc. (Honeywell) requests a technical conference. Columbia Gas filed an answer to the protests and comments and revised exhibits A and B to exclude delivery points covered by no-notice services, and NiSource, Honeywell, and BGE filed answers to Columbia Gas' answer. On May 29, 2007, Honeywell filed a response to Columbia Gas' May 17, 2007 letter.[10] The protests, comments, and answers are discussed in detail below.

III. Discussion

10. Columbia Gas' revised tariff sheets are accepted and suspended to be effective on the earlier of January 1, 2008, or a date specified in a further order of the Commission, subject to refund and conditions and further review. Columbia Gas' proposal to implement daily scheduling penalties is generally consistent with Commission policy, as discussed below. The requests for summary rejection, a technical conference or formal hearing are denied as unnecessary.

1. Showing Needed to Assess Scheduling Penalties

11. The protesting parties generally assert that the data provided by Columbia Gas in exhibits A and B are inadequate to support its proposed daily scheduling penalties. They generally argue that exhibits A and B are highly selective and limited in scope to only certain shippers, months, and points. Cities argues that Columbia Gas has not shown whether deliveries to firm shippers were affected or that a representative sample of typical conditions was used. Some parties contend that Columbia Gas has not shown

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[8] Constellation NewEnergy-Gas Division, LLC, supports the comments of BGE, its affiliate.

[9] Indicated Shippers are comprised of BP Energy Company and BP America Production Company and ConocoPhillips Company.

[10] The Commission's Rules of Practice and Procedure do not permit answers to protests or answers to answers (18 C.F.R. § 385.213(a)(2)(2006)). However, the Commission finds good cause to admit Columbia Gas' answer and the answers to it by NiSource, Honeywell, and BGE and Honeywell's response to Columbia Gas' May 17, 2007 letter since it will not delay the proceeding, assist the Commission in understanding the issues raised, and insure a complete record on which the Commission may act.

whether the proposed penalties are necessary or that these variances cause an impairment of reliable service. Honeywell complains that Columbia Gas does not show net daily imbalances, which it asserts would be more representative of system impact.

12. Columbia Gas responds that exhibits A and B, as revised in its answer, are adequate support for its filing showing that there are large scheduling variances on its system. Columbia Gas asserts that revised exhibits A and B demonstrate that shippers routinely over or under schedule their gas, many times by a wide margin. Columbia Gas further asserts that the information provided for over four recent months of shipper activity, one during the winter of 2006 and three during the summer of 2006, which the parties have not contested as inaccurate, proves that it has significant scheduling variance issues. Columbia Gas argues that the support provided demonstrates that the proposed penalties are necessary to encourage accuracy in nominating the amount of service the shipper expects to take preventing impairment of reliable service. Columbia Gas asserts that none of the protesting parties rebut the fact that shippers on Columbia Gas' system have historically shown an inability or lack of attention to keeping actual quantities within an acceptable tolerance range of scheduled quantities.

13. Piedmont argues that actual net system imbalance on any day would be smaller than the support presented by Columbia Gas. Sequent asserts that the proposed penalties penalize shippers for imbalances. Columbia Gas responds that some of the parties fail to understand that the issue under consideration here concerns scheduling variances to delivery points, not transportation imbalances.

14. Some of the parties contend that scheduling variances have not produced operational or service reliability issues for Columbia Gas. UGI, Stand, Chesapeake, and Statoil assert that Columbia Gas has failed to quantify the amount of capacity that would be made available through more accurate nominating and scheduling behavior or anticipated improvements. Columbia Gas responds that when scheduled quantities are greater than actual takes, it is evident that other shippers are being deprived of the use of capacity. Columbia Gas further responds that no evidence is needed to show that when scheduled quantities are less than actual takes, Columbia Gas has less operational control on its system and experiences increased operational risk. Columbia Gas concludes that, while documentary evidence is not required to demonstrate these facts, the results are even more apparent when its support is examined.

15. Columbia Gas contends that exhibit A provided total quantities overtaken and undertaken each day of the month for four months in 2006, and revealed that the combined shippers' actual daily takes versus scheduled daily deliveries often vary by over 50,000 Dth and as much as almost 200,000 Dth. Columbia Gas further contends that exhibit B provided the day-by-day variances for those same shippers for the same months. Columbia Gas concludes that its support demonstrates that wide variances

between scheduled deliveries and actual deliveries are common on its system and are typical of historical patterns.

16. Washington Gas complains that exhibits A and B do not distinguish no-notice services. BGE is concerned that exhibits A and B to Columbia Gas' initial filing fail to reflect no-notice transportation consistent with Columbia Gas' March 15, 2007 letter. Columbia Gas contends that, while it submitted revised exhibits A and B in its answer to remove any delivery points with no-notice service, the nature of what the support shows has not changed. Columbia Gas responds that the revised exhibits submitted in appendix A to its answer show scheduled versus actual quantities with all delivery points covered by no-notice services deleted. Columbia Gas asserts that, as revised, the exhibits continue to show very large variances between scheduled and actual delivered quantities at multiple delivery points on a daily basis.

17. New Jersey Natural notes that Columbia Gas only provided four months of data in 2006, and asserts that Columbia Gas' filing is incomplete because it did not provide the scheduling variances during the other eight months of 2006. Columbia Gas responds that it provided peak day/critical season information in its exhibits by including one month in the winter and three during the summer. Columbia Gas asserts that the information is current because it shows what occurred during the previous summer and during the winter of 2005-2006. Columbia Gas further asserts that the information relates to shippers at delivery points that do not have no-notice transportation services and who should have nominated and scheduled according to its tariff, but did not. Columbia Gas contends that the scheduling variances shown in these exhibits are large, many times going from zero volumes scheduled to many thousands of Dths taken, and other shippers' deliveries are shown to have been thousands of a percent over what they scheduled during these months.

18. The Dominion LDCs contend that because Columbia Gas has managed its system successfully for over 14 years since its Order No. 636 restructuring, the scheduling penalties are unnecessary. Columbia Gas responds that the Dominion LDCs lose sight of the fact that exhibit B provides evidence of situations experienced on its system every day at multiple delivery points where careless scheduling practices undermine system planning and forecasting accuracy. Columbia Gas asserts that the addition of the scheduling penalties will provide the necessary incentive for shippers to adhere to the tariff's scheduling provisions.

19. Chesapeake asserts that the scheduling variances are nothing new, and Columbia Gas has not shown that such variances affect the provision of reliable service. Columbia Gas answers that Chesapeake's desire for lax scheduling merely illustrates that the forecasting and system planning problems associated with wide variances are acceptable to shippers that benefit from such practices. Columbia Gas asserts that Chesapeake's arguments underscore why the scheduling penalties are essential to promote accurate

nomination practices on Columbia Gas' system. Chesapeake also complains that the numbers provided are anecdotal. Columbia Gas responds that this support provides the Commission with real examples of scheduling variances that occur every day on its system and, on numerous occasions, shippers are shown to have gone substantially beyond their scheduled nominations.

20. Indicated Shippers asserts that Columbia Gas already has considerable penalty authority to prevent problems that could threaten operations or firm services. CESI and Delmarva argue that Columbia Gas has failed to explain why the currently effective tariff provisions, including those related to OFOs, or service interruptions are not adequate tools. CSCG argues that Columbia Gas has failed to demonstrate that the existing operating tools, such as OFOs, are insufficient. Hopewell and SEMNA argue that because Columbia Gas has authority to issue OFOs the proposed scheduling penalties are unnecessary. Columbia Gas responds that all of the existing penalties are designed to prevent specific conduct, and the scheduling penalties are not duplicative of any existing provision under Columbia Gas' tariff. Further, it notes, section 284.12(b)(2)(iv) of the Commission's regulations requires that a pipeline take all reasonable actions to minimize OFOs.[11]

21. PGC objects that penalties are used to enforce contractual obligations rather than to protect system integrity and prevent under-recovery. Piedmont complains that the scheduling variance penalties, by making additional daily capacity available for short term or interruptible transportation, are more economic than operational. Indicated Shippers contends that the exhibits provided by Columbia Gas do not even purport to show any impairment of reliable service. Cities argues that economic issues and lost opportunities are insufficient to support the proposed penalties.

22. Indicated Shippers contends that Columbia Gas has not shown that reliable service is impaired by daily delivery scheduling variances. Indicated Shippers argues that Columbia Gas makes the unsubstantiated assertion that the proposed penalties are necessary to prevent daily delivery variances that affect its ability to predict and post system capacity on a daily basis when, in fact, Columbia Gas posts the availability of capacity well before the timely nominations are due for the next day. Indicated Shippers further argues that Columbia Gas sets its capacity restrictions prior to the next day's timely nomination cycle and does not modify those restrictions absent a significant operational failure.

23. Columbia Gas argues that it believes the lack of disciplined scheduling by its shippers is directly related to the complete lack of shipper incentives to remain within an acceptable tolerance range. Columbia Gas further argues that the proposed scheduling penalties will correct this behavior by providing proper incentives. Columbia Gas

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[11] 18 C.F.R. § 284.12(b)(2)(iv) (2006).

contends that when shippers tender inaccurate nominations, Columbia Gas' forecast is guaranteed to be inaccurate. Columbia Gas asserts that the lack of disciplined scheduling has hampered Columbia Gas' ability to effectively forecast and manage available capacity on a day to day basis on its system. Columbia Gas further asserts that it is required to post 24 hours in advance under section 7.9 of its GT&C, that such posting is based on forecasted system conditions, and the fact that a 24-hour advance posting is by its very nature a forecast is evident. Columbia Gas concludes that the accuracy of that forecast is largely dependent upon the quality of the scheduling information communicated to Columbia Gas by its shippers.

a. Critical Periods

24. As adopted in *Order No. 637*, section 284.12(b)(2)(v) of the Commission's regulations provides, in part, that:

> A pipeline may include in its tariff transportation penalties only to the extent necessary to prevent the impairment of reliable service.

25. The protests and comments generally assert that Columbia Gas has not shown that the proposed scheduling penalties are necessary to preserve operational integrity or protect system reliability as required by the Commission's policy set forth in *Order No. 637*. Columbia Gas responds that the scheduling penalties are designed to give it greater control over its system by requiring shippers to adhere to their nominations or communicate any changes thereto in a timely fashion. Columbia Gas asserts that these wide variances make it difficult to predict and post available capacity on a day-to-day basis. Columbia Gas further asserts that scheduled quantities greater than actual takes result in a lost opportunity for other shippers and scheduled quantities less than actual takes result in less operational control and increased operational risk. Columbia Gas asserts that the complaining parties do not attempt to rebut Columbia Gas' showing that shippers on its system ignore and abuse the nomination and scheduling processes set forth in its tariff. Columbia Gas further asserts that it has shown that shippers routinely fail to communicate their scheduling changes through the nomination cycles set forth in section 6 of its GT&C. Columbia Gas states that the Commission has expressly recognized the operational impact associated with inaccurate nominating practices stating that a shippers' failure to nominate accurately affects line pack on a pipeline's system.[12] Columbia Gas asserts that pipelines are not expected to wait until there is harm to the system before implementing a penalty.[13]

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[12] *Citing El Paso Natural Gas Co.*, 114 FERC ¶ 61,305, at P 42 (2006).

[13] *Citing* 114 FERC ¶ 61,305, at P 40 and *Tennessee Gas Pipeline Co.*, 99 FERC ¶ 61,017 at P 181 (2002).

26. Columbia Gas is not required to show actual impairment of service, only a potential threat to reliable service. The potential adverse effects of scheduling variances on system reliability are self-evident when a Critical Day has been declared. Columbia Gas has shown the conduct to be deterred has the potential to cause operational problems which may threaten its system's integrity and reliability of service. There is no need for Columbia Gas to show particular examples of shipper violations or general shipper behavior causing operational stress on its system. During critical periods, when a shipper schedules quantities of gas greater than the actual takes, or schedules quantities of gas less than actual takes, Columbia Gas has less operational control over its system and may experience increased operational risk.

27. Thus, contrary to the arguments of the parties, it is not necessary for Columbia Gas to show actual operational harm or the impairment of reliable service in order for the proposed scheduling penalties to be approved. Columbia Gas' proposed critical period scheduling penalty is designed to deter conduct which potentially threatens pipeline system operations. The Commission has found that it is not necessary for pipelines to demonstrate actual harm, and it is entirely appropriate to anticipate problems and take action to forestall them prior to such problems occurring.[14]

b. <u>Non-Critical Periods</u>

28. Certain parties argue that Columbia Gas must show an operational need or other justification to support the proposed scheduling penalties during non-critical periods. Cities contends that the heavy burden imposed by the Commission rejecting penalties on daily balancing requirements during non-critical periods[15] should be applied here to reject the proposed non-Critical Day scheduling penalty. Columbia Gas responds that the cases upon which Cities relies concern penalties imposed on daily imbalances or the difference between the gas that is physically flowed at the receipt and delivery points. Columbia Gas asserts that, in contrast, the daily scheduling variance penalties proposed in this case are imposed on the difference between the quantity of gas scheduled for delivery at a delivery point and the quantity of gas actually taken off the system at the delivery point. Columbia Gas argues that, therefore, consistent with Commission precedent, the proposed daily scheduling penalties are designed to penalize shippers for the differences between scheduled and delivered volumes, thereby encouraging them to make accurate nominations. Columbia Gas further argues that the Commission has routinely approved the imposition of nominal scheduling penalties during non-critical periods. Columbia

[14] 115 FERC ¶ 61,134 at P 15 (2006) and *Columbia Gas Transmission Corp.*, 64 FERC ¶ 61, 365 at 63,550-51 (1993).

[15] *Citing Williams Gas Pipelines Central, Inc.*, 100 FERC ¶ 61,232 (2002), *order on reh'g*, 102 FERC ¶ 61,119 (2003) (*Williams*) and *ANR Pipeline Co.*, 103 FERC ¶ 61,252 at P 13 (2003) (*ANR*).

Gas answers that it is well established that scheduling variances that occur during non-critical periods will not have operational effects on the pipeline.[16] Columbia Gas further asserts that the purpose of such a scheduling penalty is to provide an incentive for shippers to schedule accurately, and to compensate the pipeline for its lost opportunity costs, *i.e.*, to sell the capacity as interruptible service.[17]

29. Columbia Gas' proposal to charge a scheduling penalty during non-critical periods is consistent with Commission policy developed in the individual pipeline proceedings implementing *Order No. 637*.[18] The Commission agrees with Columbia Gas that a showing of operational harm is not required for implementation of a nominal scheduling penalty that is imposed during periods when a Critical Day has not been declared. In *Natural*, the Commission explained that:

> During non-critical periods, a scheduling variance will not have operational effects on the pipeline. Establishing a scheduling penalty at the IT [Interruptible Transportation] rate for non-critical periods is intended to provide an incentive for shippers to schedule accurately, and to compensate the pipeline for its lost opportunity costs. [[19]]

30. The ITS rate is such a nominal penalty rate that provides an incentive to schedule accurately and compensates Columbia Gas for lost opportunity costs. Accordingly, it is permissible for Columbia Gas to impose a scheduling penalty at the ITS rate during non-critical periods and, as noted above in discussing critical period scheduling penalties, it need not show actual operational harm.

31. Cities' reliance on the *Williams* and *ANR* cases is misplaced. Those cases concern penalties on daily imbalances. In contrast to *Williams* and *ANR*, Columbia Gas' proposed penalty is imposed on daily scheduling variances and is therefore distinguishable. As the Commission pointed out in *Natural*, penalties directed to imbalances are distinguishable

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[16] *Citing Natural Gas Pipeline Co. of America*, 103 FERC ¶ 61,174, at P 63 (2003) (*Natural*).

[17] *Citing* 103 FERC ¶ 61,174, at P 63.

[18] *MIGC, Inc*., 96 FERC ¶ 61,042, at 61,107 (2001). *Panhandle Eastern Pipe Line Co*., 97 FERC ¶ 61,046, at 61,271 (2001). *Northern Natural Gas Co.*, 105 FERC ¶ 61,174, at P 143 (2003) and 103 FERC ¶ 61,174, at P 63.

[19] 103 FERC ¶ 61,174, at P 63. The Commission explained that if a shipper schedules 200 Dth, but takes delivery of only 100 Dth, the pipeline may have lost the opportunity to sell the remaining 100 Dth as interruptible service. 103 FERC ¶ 61,174, at P 63, n. 48.

from penalties to deter scheduling variances.[20] As the Commission noted, penalties directed to imbalances are imposed on the difference between the amount injected into and withdrawn from the pipeline. On the other hand, a daily scheduling variance penalty is imposed on the difference between the amount scheduled and the amount injected or withdrawn. As discussed above, the Commission has previously approved daily scheduling penalties and imposition of such penalties in non-critical periods. Therefore, Cities' argument is rejected.

2. Exception for No-Notice Service

32. CSCG requests clarification that deliveries of gas under the GTS Rate Schedule are exempt from the proposed daily scheduling penalties. Cities requests that the applicability of the proposed daily scheduling penalties be defined both with respect to the delivery of gas to primary delivery points under each of the pipeline's transportation rate schedules, and with respect to the exposure to penalties of deliveries to secondary points using contracts that otherwise have no-notice service attributes.

33. Columbia Gas answers that its March 15, 2007 letter clarified that it is not proposing to change how no-notice service has been handled historically. Columbia Gas explained that it would replace the final sentence of proposed section 19.5, with the following language: "The scheduling penalty does not apply at delivery points covered by no-notice services."

34. Columbia Gas further clarifies that SST service to a secondary delivery point does not make that a point covered by a no-notice service since section 3(b) of the SST Rate Schedule provides that only SST service using FSS storage as a primary receipt point is eligible for no-notice scheduling. Columbia Gas asserts that the Commission's order on Columbia Gas' Order No. 636 compliance filing held that there are three no-notice services: Firm Storage Service (FSS) with SST, NTS and GTS, and confirms that the scheduling penalties will not apply at delivery points that are included as a primary point under any of these three no-notice services, and this includes delivery to these points on a secondary basis.[21]

35. Columbia Gas has responded to these requests for clarification and adequately explained the relationship of the proposed penalties to no-notice service and other rate schedules. Therefore, the Commission directs Columbia Gas to file revised tariffs sheets eliminating the final sentence of proposed section 19.5 and stating that the scheduling penalties do not apply at delivery points covered by no-notice services.

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[20] 103 FERC ¶ 61,174, at P 63 and P63, n. 46.

[21] *Citing Columbia Gas Transmission Corp.*, 64 FERC ¶ 61,060, at 61,513 (1993).

36. Washington Gas argues and BGE requests clarification that shippers having a contract for FSS Rate Schedule service are exempt from the scheduling penalties to the extent the shipper stays within its contract entitlement under all service agreements mentioned therein. Columbia Gas responds to Washington Gas that service under Rate Schedule FSS involves firm storage of gas and is not a transportation service and only becomes part of a no-notice service when it is combined with the SST service. Columbia Gas agrees with BGE's assertion that shippers with FSS contracts will continue to have their actual imbalances under any other service agreements automatically balance on their respective FSS inventories under sections 3(e) and 4(e) of that rate schedule, but asserts that automatic balancing on FSS does not mean that the shipper will avoid the scheduling penalties since FSS by itself is not a no-notice service.[22] However, Columbia Gas notes that both BGE and Washington Gas have FSS and SST service agreements and, therefore, should be able to avoid the scheduling penalties. In its answer, BGE argues that Columbia Gas' clarification means that the penalties will apply as though the balancing provisions of its tariff are not there and therefore, makes no sense. BGE asserts that the Commission has held that there can be no penalty provision in a tariff unless there are also included balancing services to avoid the penalty, *citing Dominion South Pipeline Co., LP*, 114 FERC ¶ 61,039, at P 10-11 (2006) (*Dominion South*).

37. The Commission agrees with Columbia Gas that FSS is a storage service which must be combined with SST transportation service to be considered no-notice service. Section 1 of the SST Rate Schedule states that this service is available "provided that… (iii) Shipper is a Shipper under Transporter's FSS Rate Schedule and has executed SST and FSS service agreements with Transporter." Section 3(b) of the SST Rate Schedule provides that SST service "is offered on a no-notice basis when the primary receipt point (storage) is being utilized." Further, there is no conflict between imposing the proposed penalties on scheduling variances and allowing the automatic balancing of imbalances under other service agreements that occurs under the FSS Rate Schedule since these are determinations related to different matters. Balancing reflects the difference between receipt and deliveries whereas scheduling variances are the difference between amounts scheduled and amounts delivered. Automatic balancing of an imbalance will not cure a scheduling variance or otherwise permit a shipper to avoid a scheduling penalty.[23] Thus,

[22] Columbia Gas asserts that, for example, an FSS customer cannot use an ITS contract to transport gas to a delivery point that is not a no-notice point.

[23] For example, if a shipper schedules a delivery of 200 Dth but takes only 150 Dth, it will incur a scheduling penalty based on the 50 Dth variance. If it only tendered 150 Dth at the receipt point, there would be no imbalance. If it tendered 210 Dth at the receipt point causing a 60 Dth imbalance, even if that imbalance were to be automatically balanced it still took 50 Dth less than it scheduled for which it should be penalized in the absence of no-notice service.

Dominion South is inapposite. Therefore, Washington Gas' argument is rejected, and BGE's request for clarification is denied.

38. NiSource seeks clarification that shippers which have contracted for FSS and SST services are not subject to the proposed scheduling penalties at primary delivery points listed on their SST contracts when using a service other than SST. Columbia Gas should clarify whether the proposed penalties are intended to apply in such circumstances and, therefore, is directed to fully respond with adequate support to the request for clarification by NiSource. Further, BGE in its answer, at 7-8, requests that Columbia Gas provide responses on the applicability of the proposed scheduling penalties to several hypothetical examples. The Commission directs Columbia Gas to respond to those examples as well.

39. Indicated Shippers asserts that if the proposed scheduling penalties apply only to shippers that lack no-notice service, it impacts only a small percentage of Columbia Gas' overall throughput, calling into question the operational need for such penalties. Columbia Gas responds that the number of shippers that will be subject to the scheduling penalties on Columbia Gas' system is not germane to whether or not scheduling variances create operational problems. Columbia Gas further responds that no-notice shippers are exempt from the penalties at points covered by no-notice services since a premium is paid for such services.

40. As discussed above, Columbia Gas has made a sufficient showing to support the imposition of daily scheduling penalties and no showing of actual operational harm is required. Moreover, the possibility that only a small number of shippers will be subject to the penalties has no relevance to the need for penalties to deter potentially harmful conduct by any shipper.

41. CESI and Delmarva express concern that implementation of the scheduling penalties could lead to the creation of an over-inclusive penalty structure for shippers that cover any overage or underage between scheduled and actual flows with no-notice or other storage services, including Storage In Transit Service (SIT). Similarly, Honeywell requests clarification that it can use SIT service to prevent scheduling penalties. Honeywell asserts that Columbia Gas should not be allowed to implement the proposed penalty until it is able to provide imbalance tools, including firm storage service to all similarly situated shippers on a non-discriminatory basis. Columbia Gas responds that SIT service is not a no-notice service, but rather is an interruptible balancing service designed to aid in imbalance management. Columbia Gas asserts that SIT service concerns the difference between receipts and deliveries while the proposed scheduling penalty addresses the difference between nominated deliveries and actual deliveries. Columbia Gas argues that imbalances and scheduling variances involve different issues. Columbia Gas responds to Honeywell's assertion that Columbia Gas must provide similarly situated shippers with the tools to avoid the scheduling penalties, arguing that

Honeywell ignores the fact that SIT shippers are not similarly situated to no-notice shippers. Columbia Gas asserts that, in contrast with SIT, no-notice service is a firm service for which shippers pay a reservation rate for additional flexibility. Columbia Gas further asserts that the Commission has emphasized that "SIT is not a transportation or firm service; it has very low priority, and therefore, is distinguishable from NTS."[24]

42. The Commission agrees with Columbia Gas that SIT service is not a no-notice service which may be used to avoid scheduling penalties. SIT service is an interruptible balancing service for imbalance management. Further, SIT shippers are not similarly situated to no-notice shippers. In contrast with SIT service, no-notice service is a firm service for which shippers must pay a reservation fee for the additional flexibility offered.

43. In its answer, Honeywell asserts that Columbia Gas needs to provide its customers with the tools to manage and prevent new scheduling penalties. Honeywell asserts that it did not suggest that SIT service should be considered no-notice service. It states that Columbia Gas acknowledges that SIT service is an imbalance management service not designed to assist shippers to manage scheduling imbalances. Honeywell argues that it is unduly discriminatory to provide one group of shippers who have no-notice service the tools to manage scheduling imbalances and not provide other shippers with the same opportunity. Honeywell asserts that the Commission requires pipelines to provide as many imbalance management services as operationally feasible and to work to develop new, innovative services. Honeywell further asserts that, in *Order No. 637-A*, the Commission confirmed that the term "imbalance" in its regulations was intended to apply to both physical and scheduling imbalances.[25] In its response to Columbia Gas' May 17, 2007 letter, Honeywell argues that Columbia Gas should not be permitted to implement the proposed scheduling penalties until it provides all shippers on its system with the opportunity to manage scheduling imbalances through storage or no-notice type imbalance services.

44. Contrary to Honeywell, it is not unduly discriminatory to provide an exemption from scheduling penalties for shippers under no-notice services. If shippers wish to avoid penalties for scheduling variances on Columbia Gas' system, they may avail themselves of no-notice service. This service is available to all shippers and can be used to avoid scheduling penalties. Since Order No. 636, the Commission has required pipelines such as Columbia Gas to offer a premium no-notice service, so that shippers with unpredictable demands for service can obtain service on a daily basis up to their firm

[24] *Citing* 64 FERC ¶ 61,365, at 63,504.

[25] *Citing Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Services, Order No. 637-A*, FERC Stats & Regs., Regs. Preambles [1996-2000] ¶ 31,099 at 31,603 (2000) (*Order No. 637-A*).

entitlements, without incurring penalties such as scheduling penalties.[26] Columbia Gas is not required to offer any other service for that purpose.[27] A pipeline offering no-notice transportation service must do so only to the extent the pipeline has the capacity available.[28]

45. In response to Columbia Gas' claim that the nomination cycles in section 6 of its GT&C will allow shippers to self-correct the alignment of scheduled and delivered volumes, UGI asserts that shippers will not be able to make nomination changes after the Intraday 2 Nomination Cycle (5 p.m. Central Time).[29] UGI further asserts that, as a result, shippers without no-notice transportation or storage will have a 16 hour window where they will be unable to specify nominations to avoid scheduling penalties. Columbia Gas responds that this argument amounts to a collateral attack on the Commission's rulemakings adopting the North American Energy Standards Board (NAESB) Wholesale Gas Quadrant standards for nominations. Columbia Gas asserts that it is required by the Commission's regulations and NAESB to incorporate the four nomination cycles set forth in its tariff.[30] Columbia Gas argues that therefore, to the extent UGI takes issue with the operation of these nomination cycles in the context of scheduling and other penalties, UGI should present them in the appropriate rulemaking forum. Columbia Gas further asserts that the proposed scheduling penalty is a daily penalty and, since the evening cycle is for the next Gas Day, if a shipper adjusts its nomination for that Gas Day, the Intraday 1 and Intraday 2 cycles are available to update the scheduled nominations.

46. Old Dominion argues that it does not have the ability to self-correct its scheduling variances since its Rock Springs generating facilities are subject to dispatch by the PJM Interconnection, L.L.C. Old Dominion suggests that Columbia Gas should allow scheduling on an hourly basis.

47. As explained by Columbia Gas, the four nomination cycles contained in its tariff provision comply with the Commission's regulations which adopted the NASEB standards and shippers have an opportunity to change their scheduled nominations during

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[26] 18 C.F. R. § 284.7(a)(4) (2007); *Order No. 636-C*, 78 FERC 61,186 at 61,769-72 (1997) (*Order No. 636-C*).

[27] We also take note that Columbia Gas asserts that the availability of Electronic Metering will allow shippers to monitor their scheduling variances and adjust their nominations during later cycles, thereby avoiding a scheduling penalty.

[28] *Order No. 636-C*, 78 FERC ¶ 61,186, at 61,772.

[29] *Citing* section 6.2 of Columbia Gas' GT&C.

[30] *Citing* section 6.2(e) of its GT&C, Third Revised Sheet No. 295.

the Gas Day. It is appropriate, therefore, to require shippers to adhere to the tariff's nomination cycles. Columbia Gas' proposed scheduling penalties to discourage scheduling variances, as conditionally approved herein, are consistent with Commission policy. Therefore, UGI's and Old Dominion's proposals are rejected.

3. Penalty Level

a. Critical Periods

48. VPEM, PGC, and Statoil assert that Columbia Gas' scheduling penalties are excessively punitive and unduly discriminatory. For example, VPEM asserts that shippers serving heat sensitive loads inevitably experience scheduling variances and the burden of the proposed penalties on them is disproportionate and unduly discriminatory. VPEM asserts that the critical period penalty is unsupported and, if allowed, should be reduced, *citing AES Ocean Express, LLC*.[31]

49. Columbia Gas asserts that, during critical periods, the proposed scheduling penalty is proportionate to the significant level of risk to the system and the pipeline's ability to provide reliable service. Columbia Gas further asserts that substantive penalties during critical periods are meant to deter shipper behavior that could disrupt system reliability. Columbia Gas concludes that the proposed penalty for critical periods complies with *Order No. 637* since the penalty will only apply when there is an operational threat.

50. The Commission believes that the level of the proposed penalties must be adequate to prevent undesirable shipper behavior, in this case scheduling variances that, during a critical period, could threaten the pipeline's operational integrity, and which could occur but for the presence of such penalties in the tariff. The shippers' scheduling variance behavior, which would be deterred by such penalties, has a potential negative impact on the system and other shippers. Therefore, it is of critical importance that the level of the penalty be significantly higher during critical periods and sufficient to deter such conduct and to prevent impairment of reliable service. Thus, the Commission has held that "pipelines may impose substantial penalties during critical periods."[32] The level of penalties necessary to deter the conduct is a matter of the exercise of reasonable judgment. Finally, the pipeline lacks an incentive to apply an unreasonably high penalty since it is required to credit the penalty revenues to the non-offending shippers.[33]

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[31] 111 FERC ¶ 61,291 at 62,259 (2005) (*AES Ocean Express, LLC*) (penalty of two times index during critical periods).

[32] *See AES Ocean Express, LLC*, 111 FERC ¶ 61,291 at P 30.

[33] Section 284.12(b)(2)(v) of the Commission's regulations provides that pipelines may not retain net penalty revenues, but must credit them to shippers.

51. The Commission finds that the level of Columbia Gas' proposed Critical Day scheduling penalty is consistent with Commission policy. As Columbia Gas points out, the Commission accepted the identical penalty level for Takes in Excess of Total Firm Entitlements (TFE), Failure to Interrupt Service (FTI), and Failure to Comply With Operational Flow Orders (OFO) in sections 19.1, 19.2, and 19.3, respectively, of the GT&C of its tariff.[34]

b. Non-Critical Periods

52. VPEM also asserts that Columbia Gas' proposed use of the interruptible service rate from the ITS rate schedule during non-critical periods is unduly discriminatory. VPEM asserts that Firm Transportation Service (FTS) shippers can convert to "NNS" (no-notice service) service at an additional cost of about 6 cents per Dth, which is less than the interruptible service rate of 19 ½ cents per Dth, and avoid paying the penalty for scheduling variances. Therefore, VPEM suggests that the penalty should be 6 cents per Dth or the difference between the no-notice service rate and the FTS rate.

53. As explained earlier herein, in *Natural* the Commission found that the use of a nominal scheduling penalty based on the ITS rate for non-critical periods is appropriate.[35] In *AES Ocean Express, LLC*,[36] the Commission accepted a non-critical period scheduling penalty equal to the pipeline's IT rate. Therefore, we find that the proposed penalty is consistent with Commission policy and is just and reasonable and not unduly discriminatory.

4. Tolerance Levels

54. Several of the parties claim that the tolerance levels proposed by Columbia Gas (5 percent for non-critical periods and 2 percent for critical periods) are too strict, not consistent with Commission policy, and unsupported. PGC requests that Columbia Gas be required to provide support for the proposed levels or apply levels of at least 7 percent

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[34] *See, e.g., Columbia Gas Transmission Corp.*, 113 FERC ¶ 61,191 (2005), *order on reh'g*, 115 FERC ¶ 61,134 (2006), where the Commission accepted an increase in penalties to prevent impairment of reliable service, reflected in section 19 of Columbia Gas' tariff, to equal three times the midpoint of the range of prices reported for "Columbia Gas, Appalachia" published in *Platts Gas Daily* price survey as proposed in this case. *See also Columbia Gulf Transmission Co.*, 113 FERC ¶ 61,204 (2005), *order on reh'g*, 115 FERC ¶ 61,135 (2006).

[35] 103 FERC ¶ 61,174, at P 63.

[36] 111 FERC ¶ 61,291 at P 30 (2005).

during non-critical periods and 3 percent during critical periods.[37] Honeywell and New Jersey Natural argue that reasonable tolerance level would be 10 percent in normal times and 5 percent in critical periods. Cities argues that Columbia Gas should be required to apply a more reasonable tolerance percentage, *e.g.*, 10 percent, and to establish an absolute volumetric tolerance , *e.g.*, 2,000 Dth, and apply the higher of the two tolerances. VPEM argues for more liberal tolerances in an "in the alternative" solution. Hopewell and SEMNA argue that since the industry average meter error is 2 percent, the 5 percent tolerance is illusory at best. Indicated Shippers asserts that Columbia Gas has failed to justify its proposed tolerances, pointing out that a 2.0 percent tolerance is within the range of acceptable meter error under section 26.12 of the GT&C of its tariff. In addition, other parties contend that due to the proposed scheduling tolerances, the scheduling penalties will have a disproportionate impact on small contract entitlement shippers and shippers with heat sensitive loads.

55. Columbia Gas argues that the Commission policy with respect to scheduling penalties is to require some operating tolerance before the imposition of such penalties except in emergency situations. Columbia Gas asserts that the Commission has approved scheduling penalty tolerance levels similar to those being proposed here for other pipelines.[38] Columbia Gas asserts that the protesting parties overlook the fact that the scheduling penalties will only apply at delivery points with electronic metering (EM) capabilities. Columbia Gas further asserts that the availability of EM will allow shippers to monitor their scheduling variances and adjust their nominations during later cycles, thereby avoiding a scheduling penalty.

56. As Columbia Gas asserts, the Commission has approved similar tolerance levels for non-critical period scheduling penalties in other pipelines' tariffs and, accordingly, the Commission accepts the 5.0 percent tolerance for non-Critical Day scheduling variances. A stricter tolerance level is permitted for critical periods in order to prevent threats to service reliability. However, the tariff provisions Columbia Gas cites do not support its proposed 2.0 percent Critical Day scheduling variance tolerance. Further, sections 19.1 and 19.2 of its existing penalty provisions provide for the same penalty level but with a 3.0 percent tolerance. Accordingly, Columbia Gas is directed to explain why its Critical Day scheduling tolerance should not be increased to 3.0 percent or some higher level.

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[37] *Citing* 114 FERC ¶ 61,305, at P 112.

[38] *Citing, e.g.*, Guardian Pipeline, LLC, FERC Gas Tariff, Original Vol. No. 1, General Terms and Conditions, section 14.1, Third Revised Sheet No. 162 (5.0 percent tolerance level) and Equitrans, L.P., FERC Gas Tariff, Original Vol. No. 1, General Terms and Conditions, section 8.9, First Revised Sheet No. 230 (4.0 percent tolerance level).

57. Several parties argue that Columbia Gas should be required to employ scheduling penalty tolerance levels based on both an absolute volumetric limit or "safe harbor" and tiers based on percentages to avoid discrimination against small shippers. Piedmont and Dominion LDCs assert that, without a "safe harbor" provision, there is a disproportionate impact on small shippers whose demands may change on an intraday basis. New Jersey Natural argues that Columbia Gas should be required to establish a reasonable absolute tolerance, *i.e.*, at least 1,000 Dth/day per delivery point. PSEG requests that Columbia Gas be required to establish a "safe harbor" of at least 1,000 Dth on a daily basis. Columbia Gas responds that the use of a proportional tolerance does not unduly discriminate against small customers. Columbia Gas asserts that those shippers serving heat sensitive loads whose demands may change on an intraday basis can use its intraday nomination procedures. However, Columbia Gas states that it is receptive to the inclusion of an absolute tolerance "safe harbor" of 1,000 Dth to ensure that small volume shippers are not negatively affected.

58. Scheduling penalty tolerances based on a percentage of the amount scheduled have routinely been accepted by the Commission and are, therefore, consistent with Commission policy. However, Columbia Gas has agreed to include an absolute tolerance level of 1,000 Dth in its proposed penalty provisions. Therefore, Columbia Gas is directed to file revised tariff sheets providing for tolerance levels at the greater of an absolute tolerance level of 1,000 Dth or the proposed tolerance levels.

5. Waiver of Penalties

59. Some parties contend that the scheduling penalties should not be imposed where scheduling variances benefit the system, no operational harm results, or the shipper is not at fault. Coral asserts that scheduling penalties should not apply without first examining the reason for the variance, the overall system impact, and the shipper's historical behavior, *i.e.*, whether the shipper is a habitual offender. PGC claims that Columbia Gas should waive the scheduling penalties where the variance results in no harm to system integrity. Cities asserts that the tariff should be waived to the extent a shipper takes action consistent with instructions from the pipeline. New Jersey Natural asserts that the penalties should be waived when Columbia Gas directs the shipper to adjust its receipts and deliveries in response to a critical or other notice.

60. Columbia Gas contends that the beneficial effect of scheduling variances at delivery points is illusory because the parties requesting waiver misconstrue the nature of scheduling variances and confuse them with imbalances. Columbia Gas asserts that the concept of being "long" or "short" does not apply to scheduling variances. Columbia Gas concludes that, as a result, a shipper scheduling more or less quantities of gas than it actually takes at the delivery point does not benefit its system. Columbia Gas states that, with respect to waiving or reducing penalties that are caused by events shippers cannot control, it will determine the merits of such waivers on a case-by-case basis. Columbia

Gas asserts that it is not possible for Columbia Gas to know the circumstances under which a scheduling variance is created in advance. Columbia Gas further asserts that the idea of having to determine whether a shipper is a repeat offender or whether any operational impact occurred would be administratively burdensome, would conflict with the purpose of the penalties, and ignores the nature of the nominal penalty that applies during non-critical periods. Columbia Gas, responding to PGC's request for a waiver when there is no operational harm, asserts that PGC ignores the fact that the scheduling penalty will apply during non-critical periods and that there usually will be no operational impact during non-critical periods.

61. The determination of whether a shipper is a repeat offender or operational impact would conflict with the purpose and nature of the proposed penalties and could be administratively burdensome. With respect to the requests for waivers on other grounds, existing section 19.5(d) of Columbia Gas' GT&C[39] provides that Columbia Gas may waive its right to collect all or any portion of the penalties assessed against the shipper, provided that any such waiver is granted in a nondiscriminatory manner.[40] In its answer, Columbia Gas expressed its willingness to provide waivers or reductions of the proposed scheduling variance penalties caused by events the shipper cannot control and determine such waivers on a case-by-case. However, Columbia Gas asserts that it is not possible to know the circumstances under which a scheduling variance is created in advance. The Commission agrees with Columbia Gas that the requests are premature. Therefore, the Commission will not require Columbia Gas to provide the specific circumstances under which it will grant waiver in its tariff at this time.

6. <u>Netting and Trading</u>

62. Coral requests that the Commission direct Columbia Gas to allow trading of scheduling variances to minimize paper imbalances and penalties. New Jersey Natural also argues that shippers should have the flexibility to trade variances. Piedmont argues that the proposed scheduling variance penalties fail to net out scheduling variances between positives and negatives and to account for instances where scheduling variances actually help the system.

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[39] Proposed to be renumbered as section 19.6(d) in this filing.

[40] Columbia Gas also added a reference to scheduling variances in proposed section 19.6(e) to state that "To the extent that any imbalance or scheduling variance directly results from Shipper's reliance on inaccurate data from Transporter, or is otherwise caused by Transporter, no penalty will be assessed for that portion of the imbalance or scheduling variance shown by Shipper to be attributable to such inaccurate data."

63. Columbia Gas argues, in response to the requests for netting, that it cannot predict shipper activity when shippers fail to communicate with the pipeline, and that its system needs and capacity availability cannot be determined through guess work. Columbia Gas further argues that it is the shippers who should be responsible for scheduling via the nomination cycles set forth in its tariff. Columbia Gas argues that, therefore, scheduling variances cannot be netted. Columbia Gas further argues that Coral's reference to paper imbalances indicates a lack of understanding of the physical consequences of scheduling variances. Columbia Gas asserts that when nominations do not reflect the actual amount of gas being delivered Columbia Gas' control of its system is undermined.

64. The Commission will not require netting or trading of daily scheduling variances. As explained by Columbia Gas, scheduling variances do not present the same problem as imbalances, *i.e.*, the difference between the amount of gas injected into and withdrawn from the pipeline, and cannot be netted or traded. Inaccurate scheduling affects availability of capacity for other shippers and may not be cured or negated simply because one shipper exceeds scheduled deliveries by the same amount as another shipper takes less than as scheduled. The shipper who took less than scheduled quantities still caused the pipeline to incur opportunity costs and both inaccurate nominations distort the amount and location of available capacity.

7. <u>Other Alternative Proposals</u>

65. Some parties suggest that Columbia Gas must use alternative methods to address the problem of scheduling variances before the proposed penalties are used. For instance, CESI and Delmarva suggest allowing scheduling after the Intra-Day 2 nominations or restricting the amount of gas that can be injected or with drawn from a SIT account on a daily basis. Hopewell and SEMNA argue that access to storage capability and requesting shippers to allow Columbia Gas to use such capability are a better alternative. Chesapeake asserts that Columbia Gas retained 12.8 Bcf of storage capacity to deal with inherent system balances on any given day. Cities requests that OFOs or other tools be examined. Columbia Gas contends that the scheduling variances it experiences on the system can only be resolved through the implementation of the proposed penalty. Columbia Gas further contends that, at the present time, its options for dealing with scheduling variances are limited to (1) doing nothing, or (2) taking the drastic measure of issuing an OFO, which can be shipper specific. Columbia Gas asserts that Chesapeake confuses scheduling variances with imbalances and the amount of retained storage on its system is substantially lower today than it was during restructuring under Order No. 636. Columbia Gas further asserts that it is proposing to implement a nominal scheduling penalty when shipper scheduling variances range beyond a reasonable tolerance level to motivate shippers to accurately and timely communicate their delivery needs. Columbia Gas contends that shippers will have opportunities to avoid the scheduling penalties since the EBB system provides virtually instant feedback to shippers on actual takes and

shippers will then be able to update their nominations through the intraday nomination cycles.

66. None of the alternatives presented supports a finding that Columbia Gas' proposed scheduling penalties have not been shown to be just and reasonable. If the pipeline shows that its proposal is just and reasonable, the Commission must accept it, regardless of whether other rates, terms, or conditions might also be just and reasonable. In addition, with respect to OFOs, as pointed out above, section 284.12(b)(2)(iv) of the Commission's regulations provides that a pipeline must take all reasonable actions to minimize the issuance and adverse impacts of OFOs which expresses the Commission's intention for pipelines to avoid OFOs when possible, due to the significant penalties and restrictions imposed on shippers associated with OFOs.

8. Multiple Penalties for the Same Conduct

67. Some parties assert that with the addition of the scheduling penalties, shippers will be subject to multiple penalties under both the scheduling penalties and existing penalty provisions. For example, Indicated Shippers request clarification that Columbia Gas will not assess both proposed scheduling penalties or the proposed scheduling penalties and the FTI or OFO penalty on the same infraction. Dominion LDCs and Hopewell and SEMNA argue that Columbia Gas should clarify in its tariff that a shipper will not be subject to multiple penalties for the same infraction. Cities requests that the Commission require that the same conduct not be penalized twice, but that the higher of the otherwise applicable penalties will apply.

68. Columbia Gas clarifies that shippers will not be subject to multiple penalties for the same conduct. Columbia Gas asserts that, for example, shippers that are assessed penalties for failure to comply with an OFO or for failure to interrupt will not also be assessed penalties for which the issuance of a critical notice is required. However, Columbia Gas also asserts that, under this example, a shipper could still be assessed a nominal scheduling penalty, along with the OFO and FTI penalties.

69. The Commission has held that pipelines are prohibited from applying multiple penalties for the same infraction.[41] The Commission finds that Columbia Gas must not impose a non-critical day scheduling penalty for the same conduct for which it imposes a Critical Day scheduling penalty. Nor may it impose either a Critical Day or non-Critical Day scheduling penalty for the same conduct that is also subject to a TFE, FTI, or OFO

[41] *Columbia Gas Transmission Corp.*, 100 FERC ¶ 61,084 at P 201 (2002).

penalty.[42] Accordingly, Columbia Gas must file revised tariff sheets to reflect the foregoing.

70. Although the proposed tariff language in section 19.5 limits the higher scheduling penalty to periods "When the Transporter has declared a Critical Day," the penalty at the ITS rate is not expressly limited and could be interpreted as applying at all times, even when a Critical Day has been declared. Therefore, Columbia Gas is directed to file revised tariff sheets clarifying that the proposed scheduling penalty at the ITS rate applies only when a Critical Day has not been declared.

9. Other Issues

71. Indicated Shippers asserts that historically, Columbia Gas has not netted any costs out of credited penalties. Indicated Shippers further asserts that, if penalty imposition becomes a revenue opportunity, Columbia Gas will have an incentive to force shippers into imbalance situations. Indicated Shippers argues that the Commission should require Columbia Gas to clarify whether it intends to net costs out of the revenues associated with these penalties and to identify whether the types of costs it anticipates it would net out of the credited revenues.

72. Section 19.6(b)(i) of Columbia Gas' GT&C[43] defines penalty revenues as net of Transporter's costs consistent with section 284.12(b)(2)(v) of the Commission's regulations. In addition, the Commission has responded to previous requests that Columbia Gas define "net of Transporter's costs". The Commission directed Columbia Gas to include a requirement that it will file a report within 60 days of the close of the contract year showing the penalty revenues, the costs netted against the penalty revenues, and the resulting penalty revenue credits for each month of the contract year (November 1 to October 31).[44] As the Commission pointed out, Columbia Gas has the burden to support any costs included in the penalty revenue report and its customers may challenge the revenues, costs, and methods of identifying and accounting for these amounts when the report has been filed. While Columbia Gas is permitted to recover its costs, this cost recovery does not give it an incentive to increase penalties for use as a

[42] Section 19.8, proposed to be renumbered as section 19.9, currently prohibits imposition of both OFO or FTI penalties and Critical Day penalties. Further, section 19.2 prohibits imposition of FTI and TFE penalties for the same actions by a Shipper.

[43] Proposed to be renumbered as section 19.7(b)(i).

[44] 100 FERC ¶ 61,084 at P 237. This reporting requirement, contained in section 19.6(d) of Columbia Gas' currently effective tariff, is renumbered as proposed section 19.7(d).

profit center. Therefore, Indicated Shippers' requested clarification regarding crediting is denied.

73. In its answer, BGE requests that Columbia Gas be required to segregate the scheduling penalty revenues for non-critical periods and not make the offending shipper ineligible to share in the penalty revenue from other penalties. BGE asserts that the real harm to the shipper of the proposed penalty charge for non-critical periods is that the offending shipper is ineligible to share in all penalty revenues, thereby increasing the total pot of penalty revenues while reducing the pool of eligible shippers. BGE asserts that this could have a chilling effect on secondary market transactions. However, the Commission notes that the imposition of any penalty will have the effect of making a shipper ineligible to share in the crediting of penalty revenues. The purpose of the proposed scheduling penalty during non-critical periods includes discouraging shipper behavior which produces the scheduling variance, and the deterrent effect should make more capacity available. Therefore, BGE's request for segregation of non-critical period penalty revenue is denied.

74. UGI argues that OBA point operators should receive the penalty revenues that are credited.[45] UGI argues that penalty revenues should only be credited to OBA point operators for distribution to shippers consistent with their contracts. Current section 19.6, proposed to be as section 19.7, requires that Columbia Gas credit the penalty revenues to the non-offending "shippers" consistent with section 284.12(b)(2)(v) of the Commission's regulations. Therefore, UGI's argument is rejected as unsupported.

75. IOGA is concerned about the impact of the proposed penalties on its members and the choice of supplies. IOGA asserts that the Commission should take into account any potential unduly discriminatory impact of the proposed penalties on certain suppliers or sources of supply. Therefore, IOGA requests that the Commission condition its acceptance of the scheduling penalties on Columbia Gas filing an annual report on June 1 of each year detailing the operation of the penalty and whether the threat of such a penalty has had the desired result. IOGA states that, if the Commission permits Columbia Gas to implement the penalty, it reserves the right to address these issues in the future. Columbia Gas argues that it should not be required to file an annual report to prove a negative. Columbia Gas asserts that other than expressing a wholly unsubstantiated concern that the proposed scheduling penalties could have a disproportionate affect on small independent producers, there is absolutely no foundation for conditioning the acceptance of its proposal. Columbia Gas further asserts that the fact

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[45] UGI cites *Tennessee Gas Pipeline Co.*, 101 FERC ¶ 61,303 at P27-28 (2002), *order on reh'ng*, 105 FERC ¶ 61,367 (2003). However, that case, unlike the penalty revenue crediting proposal under consideration here, concerned refunds of cash-out revenues pursuant to tariff provisions and underlying settlements based on the pipeline's operating structure.

that most Appalachian production is delivered to pooling points that lack electronic metering will exempt these shippers from the scheduling penalties.

76. IOGA's request for an annual report is based on vague, speculative, and unsupported concerns. To the extent any issues do arise concerning the penalties' impact on certain suppliers and sources of supply, IOGA may raise such issues in another proceeding. Therefore, the annual reporting condition is denied as unsupported.

77. Indicated Shippers also request that the Commission direct Columbia Gas to revise proposed section 19.5 which provides that the penalty will equal three times the mid-point price to clarify it will use the price published on the day the violation occurs to compute the penalty. Proposed section 19.5 states in pertinent part:

> *When Transporter has declared a Critical Day*, the scheduling penalty will be equal to three times the midpoint range of prices reported for "Columbia Gas, Appalachia" as published in Platts Gas Daily price survey for each Dth by which Transporter's deliveries vary by 2% or more from scheduled quantities." [Emphasis added.]

The Commission finds that the emphasized language is sufficiently clear and requires that, when Columbia Gas has declared a Critical Day, the daily scheduling penalty will be determined by the price published on the Critical Day on which the violation occurred. Therefore, the request for clarification by Indicated Shippers is denied.

78. Chesapeake states that it interprets the proposed scheduling penalties to apply only to physical delivery points with electronic measurement capability and expresses concern about determining receipt quantities and appropriate recognition of OBAs entered into in accordance with section 8.3 of Columbia Gas GT&C. Chesapeake requests clarification on these matters. Sequent also complains that the filing fails to address how the proposed scheduling penalties will be implemented at OBA points. Columbia Gas agrees with Chesapeake's requested clarification that the scheduling penalties apply only to physical delivery points with electronic measurement capability, which will exclude deliveries into the pool. Columbia Gas further states that the scheduling penalties do not apply at receipt points. The Commission accepts Columbia Gas' clarification of these matters as satisfactory. However, the relationship of OBAs to the scheduling variance penalties requires further explanation. Therefore, Columbia Gas is directed to explain with adequate support how the proposed penalties will be implemented at OBA points.

79. New Jersey Natural contends that Columbia Gas has failed to demonstrate that it has completely thought through all of the administrative issues that would result from its proposed scheduling penalty scheme and that a tracking system or similar mechanism is needed. New Jersey Natural asserts that the application of PPAs to reflect metering errors several months after the fact and waiver of the scheduling penalty in the event of an overrun are unclear. Columbia Gas responds that PPAs will continue to be dealt with

under section 8.4 of its GT&C. Columbia Gas further responds that overrun service is not a penalty, but rather is a service for which shippers are charged a rate and therefore, shippers will not be penalized twice by imposition of an overrun charge and the scheduling penalty.

80. New Jersey Natural's argument is rejected as vague, speculative, and unsupported. Further, we agree that an overrun charge is a charge for a service, and is not a penalty. Under section 19.6, proposed to be renumbered as section 19.7, of Columbia Gas' existing tariff, overrun transportation revenues imposed pursuant to any of its rate schedules are excluded from penalty revenues.

81. Finally, Indicated Shippers requests that Columbia Gas be directed to separate the proposed scheduling penalty provision into two separate subsections to recognize that critical period and non-critical period scheduling penalty levels and tolerances are different. We agree and direct Columbia Gas to separate the proposed scheduling penalty section in section 19.5 as described.

10. Effective Date

82. Columbia Gas requests waiver of the requirement of section 154.207 of the Commission's regulations that all proposed changes in tariffs must be filed not less than 30 days nor more than 60 days prior to the proposed effective date to accommodate a date that is contemporaneous with the commencement of its new EBB system. Columbia Gas filed its proposed tariff changes on March 6, 2007, and initially proposed an effective date of June 1, 2007. On May 17, 2007, Columbia Gas filed to revise the proposed effective date of June 1, 2007, to August 1, 2007, in light of an expected delay until August 1, 2007 in launching its new EBB. UGI requests that the Commission deny Columbia's request for waiver of the 60-day period. UGI asserts that the parties should be allowed to fully review and comment on this proposal.

83. Some of the parties contend in their comments that Columbia Gas should delay implementation of its scheduling penalties until sometime after the proposed June 1, 2007 originally-anticipated commencement date of the new EBB system, now revised to be August 1, 2007, as detailed in Columbia Gas' May 17, 2007 letter. These parties state that they are concerned about the new computer system commencing concurrently with the new penalties, shipper confusion, and the need for formal training. Columbia Gas answers that it does not believe that operating experience under the new EBB is necessary before the scheduling penalties go into effect. Columbia Gas asserts that to the extent problems occur with the new EBB system that result in shippers incurring scheduling penalties, it will take the necessary measures to ensure that shippers are not inappropriately penalized. Responding to Indicated Shippers' suggestion of a technical conference on the EBB system, Columbia Gas asserts that it will give its shippers training prior to the commencement of the EBB system.

84. The Commission finds good cause to grant waiver of section 154.207 of the Commission's regulations. However, in light of the fact that we have directed Columbia Gas to modify its proposal and to further clarify how its proposed penalties will work, and because of the concern of its shippers over the implementation of its new EBB system at the same time as it implements the new penalties, the Commission will suspend the effectiveness of the filing until the earlier of January 1, 2008, or a date specified in a further order of the Commission. This suspension does not relieve Columbia Gas of its promise to take corrective measures to protect shippers from being inappropriately penalized as result of problems with the implementation of its new EBB system.

IV. Suspension

85. Based upon a review of the filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission accepts the proposed tariff sheets, subject to refund, and suspends their effectiveness for the period set forth below, subject to the conditions set forth in this order.

86. The Commission's policy regarding rate suspensions is that rate filings should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.[46] It is also recognized however, that shorter suspensions may be warranted under circumstances in which suspension for the maximum period may lead to harsh and inequitable results.[47] Such circumstances do not exist here. Accordingly, the Commission will exercise its discretion to suspend the tariff sheets for the maximum period and permit the rates to take effect on the earlier of January 1, 2008, or a date specified in a further order of the Commission, subject to refund and the conditions set forth in the body of this order and in the ordering paragraphs below.

The Commission orders:

(A) The revised tariff sheets listed in the appendix to this order are accepted and suspended, to become effective on the earlier of January 1, 2008, or a date specified in a further order of the Commission, subject to refund and conditions and further review, as discussed in the body of this order and the ordering paragraphs below.

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[46] *See Great Lakes Gas Transmission Co*., 12 FERC ¶ 61,293 (1980) (five-month suspension).

[47] *See Valley Gas Transmission, Inc*., 12 FERC ¶ 61,197 (1980) (one-day suspension).

(B) Columbia Gas is directed, within 15 days of the date this order issues, to file revised tariff sheets and information and explanations with adequate support consistent with the discussion in the body of this order.

(C) The request of Columbia Gas for waiver of section 154.207 of the Commission's regulations is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Columbia Gas Transmission Corporation
Docket No. RP07-340-000

FERC Gas Tariff, Second Revised Volume No. 1

Fifth Revised Sheet No. 390
Original Sheet No. 390A
Sixth Revised Sheet No. 391
Second Revised Sheet No. 392